REMARKS

Reconsideration and allowance of this application are respectfully requested in light of the foregoing amendments and the following remarks.

Claim Status

Claims 1 - 2 as presented in the originally filed application are still active in this case. Accordingly, claims 1 - 2 are pending in the application and are amended.

§102 Rejection

Claim 1 stands objected to under 35 USC § 102(e), as being anticipated by Moore, US Patent Pub 2003/0099370 A1. Applicant traverses. Moore discloses a very specialized hearing aid which includes an image sensing device, a sound input transducer, a sound output transducer and a processor and a process for how this hearing devices works. The instant invention is very different, first it is not to a hearing device at all but a method to optimize the programming of all hearing aids independently of the manufacturer (see paragraph [0045]). Applicant has amended the claims in this application to more clearly set forth the invention.

To anticipate a claim, a single source must contain all of the elements of the claim. *See Hybritech Inc. v. Monoclonal*

Antibodies, Inc., 802 F.2d 1367, 1379, 231 USPQ 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 USPQ 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 USPQ 344, 346 (C.C.P.A. 1978). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *See Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 USPQ 1264, 1271 (Fed. Cir. 1984). Where a reference discloses less than all of the claimed elements, an Examiner may only rely on 35 USC § 103. *See Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780, 227 USPQ 773, 777 (Fed. Cir. 1985).

Claim 1 as amended is drawn to a process where a hearing aid from any manufacture can be optimized by a specialist showing a patient a video sequence which includes sound for matching a hearing aid to a patient's individual requirements. The Moore reference '370, teaches boosting the signal to this specialized hearing aid when it detects human speech, unlike Moore the instant invention works with any independently manufactured hearing aid and is not limited to only one type of hearing aid having special image sensing devices. As there is no way that these two inventions are even remotely close the objection needs to be removed and the claim allowed.

§103 Rejection

Claim 2 stands rejected as being obvious from Moore '370 in view of Stott et al '072. The examiner avers that Moore teaches everything but the enclosed room and a place for a specialist for a matching process. The examiner avers that Stott teaches the remaining elements, Applicant traverses.

For the reasons given above Moore teaches a specialized hearing device and a method for using that device, it clearly fails to teach a process for optimizing any independently manufactured hearing aid and is limited to only one type of hearing aid having special image sensing devices. The instant invention teaches a process were a hearing aid from any manufacture can be optimized by a specialist showing a patient a video sequence which includes sound for matching a hearing aid to a patient's individual requirements.

Now looking at the Stott reference this is reference for administering a hearing test and has nothing to do with optimizing the setting of hearing aids. Further Stott specifically teaches in the summary of the invention (column 3 lines 13-18):

> Such an arrangement allows the patient to test his own hearing with minimal or no assistance from an audiologist or other hearing health professional. The user interface also allows the operator to configure the automated hearing test as needed.

The Stott reference clearly teaches away from using a specialist where in the instant invention it is a method for a specialist to use in optimizing a hearing aid from any manufacture to a patient's individual requirements. In the Stott '072 reference, the only reference to a hearing aid is on page 2 under other publications, the process of the Stott reference is to determine if someone might need a hearing aid, but it clearly has nothing to do with optimizing hearing aids.

Motivation may be lacking when the state of the art at the time of the invention in question was discovered pointed researchers in a different direction than the inventor proceeded. Indeed, the Federal Circuit has repeatedly recognized that proceeding contrary to the accepted wisdom in the art represents "strong evidence of unobviousness." *In re Hedges,* 783 F.2d 1038, 1041, 228 U.S.P.Q. 685, 687 (Fed. Cir. 1986); *W.L Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1552, 220 U.S.P.Q. 303, 312 (Fed. Cir. 1983), *cert. denied,* 469 U.S. 851 (1984) (prior art teaching that conventional polypropylene should have reduced crystallinity before stretching and should undergo slow stretching, led away from claimed process of producing porous article by expanding highly crystalline PTFE by rapid stretching); *accord In re Fine,* 837 F.2d 1071,1074, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988).

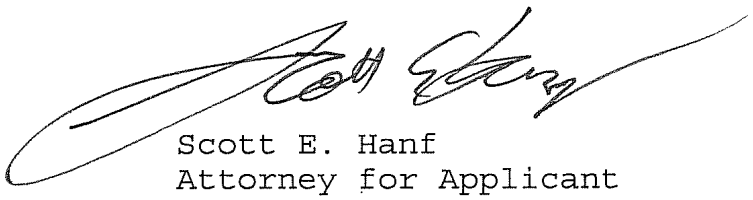
Applicant asserts that as Stott clearly teaches away from use of a specialist the reference cannot teach a monitor facing a specialist, as asserted by the office. In Stott, Column 5 lines 10-37, there is no teaching or suggestion of a specialist and in column 3 lines 13-18 use of a specialist is taught against.

Applicant respectfully requests that the objection to all the claims be withdrawn. As Applicant has the same number of claims which he originally paid for, no new fee is believed to be due. However, if the office determines that a credit is due, or an additional fee is necessary, then they are authorized to charge deposit account 08-2447.

Conclusion

In view of the foregoing, Applicant respectfully requests an early Notice of Allowance in this application.

Respectfully submitted,



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